

Applicant : Robert Thomas Hudak  
Serial No.: 09/915,494  
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Attorney's Docket No.: (40002-0271)  
17072-002001

### **REMARKS**

In the office action mailed October 22, 2003, the Examiner rejected claims 1-59 under 35 U.S.C. §112, first paragraph. Claims 1-4, 11, 14, 16, 17, 19, 21-23, 28, 29, 31, 33, 34, 39, 40, 44-47, and 51-54 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. (USP) 6,277, 646 to Guirguis. The Examiner also rejected claims 1, 2, 4, 13, 15, 16, 17, 19, 20, 22, 26, 27, 29, 31, 33-39, 42, 44-46, 49, and 51-56 under 35 U.S.C. 102(e) as being anticipated by USP 6,576,193 to Cui. Claims 1, 11, 14, 16, 17, 19, 20, 22, 30, 32-46, 49, and 51-57 were rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,565,808 to Hudak. Finally, claims 3, 5, 7, 8, 18, 47, and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cui in view of USP 5,115,934 to Nelson.

Pursuant to this paper, Applicant has amended several claims and has added new claim 60. Applicants respectfully request reconsideration of the application in view of the foregoing amendment and the following comments.

#### **Objections to the Disclosure**

The Examiner objected to the description of Figure 2 on page 1 of the specification because the description does not refer to Figures A-F. Applicant has revised the specification so that the description of Figure 2 refers to Figures 2A-F. Applicant respectfully submits that the objection to the disclosure has been overcome.

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#### Rejections Under 35 U.S.C. §112

Claims 1-59 were rejected under 35 U.S.C. 112, second paragraph. Applicant has amended claims 1, 7, 8, 13, 29, 30, and 44 to overcome the Section 112 rejections.

The examiner also asserted that the term "snugly" in claim 15 is indefinite because it is a relative term. Applicant respectfully disagrees that the term "snugly" is relative. Merriam-Webster's dictionary defines the term "snug" as "fitting closely and comfortably". This definition of the word "snugly" does not include any relative or comparative terms and the examiner has failed to provide any support that the word is relative. Accordingly, Applicant respectfully submits that the examiner's improperly asserted that the term "snugly" is a relative term. The rejection of claim 15 under Section 112 should be withdrawn.

In view of the foregoing amendments and arguments, applicant respectfully submits that the rejections under 35 U.S.C. 112 have been overcome.

#### Rejections Under 35 U.S.C. 102

The Examiner rejected claims 1, 2, 4, 13, 15, 16, 17, 19, 20, 22, 26, 27, 29, 31, 33-39, 42, 44-46, 49, and 51-56 under 35 U.S.C. 102(e) as being anticipated by USP 6,576,193 to Cui. However, claim 1 and its dependent claims recite features that are not disclosed by Cui. For example, claim 1 recites that a valve is functionally interposed between a chamber and a reservoir and is actuated to transfer at least a portion of a

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specimen from the chamber to the reservoir ... wherein the valve can be actuated only once. Cui fails to disclose or suggest a valve that can be actuated only once.

Cui describes a device for collecting fluid specimens. The Cui device includes a fluid valve 20 that fluidly connects a first compartment 12 and a second compartment. The valve 20 is actuated by rotating a cylinder well 22 from a first position where the well is aligned with openings in the first compartment to a second position where the cylinder well 22 is aligned with openings in the second compartment. When actuated, the valve 20 transfers fluid from the first compartment to the second compartment. The Cui valve 20 does not include any mechanism or feature such that the valve 20 can be actuated only once. Rather, the valve 20 can be actuated several times and there is no limit on how many times the valve can be actuated. Because Cui fails to teach every limitation of claim 1, the Section 102 rejection of claim 1 in view of Cui should be withdrawn.

Claims 1-4, 11, 14, 16, 17, 19, 21-23, 28, 29, 31, 33, 34, 39, 40, 44-47, and 51-54 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. (USP) 6,277, 646 to Guirguis. However, Guirguis fails to teach or suggest a valve that can be actuated only once. Guirguis describes a fluid specimen collecting and testing apparatus. The apparatus includes a fluid releasing element 100 that can be actuated to release fluid from a isolation chamber into a test chamber. However, Guirguis does not provide any limit on how many times the releasing element can be actuated. In

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contrast, the valve of claim 1 can only be actuated once. Accordingly, the rejection under Section 102(e) in view of Guirguis should be withdrawn.

Claims 1, 11, 14, 16, 17, 19, 20, 22, 30, 32-46, 49, and 51-57 were rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,565,808 to Hudak. However, Hudak fails to teach or suggest a valve that can be actuated only once. Accordingly, the Section 102(e) rejection in view of Hudak should be withdrawn.

Claims 2-59 are patentable over Cui, Hudak and Guirguis in view of their dependence on claim 1. In addition, claims 2-59 recite features that are neither taught nor suggested by the cited art.

Rejection Under 35 U.S.C. 103(a)


Claims 3, 5, 7, 8, 18, 47, and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cui in view of USP 5,115,934 to Nelson. These claims depend from claim 1, which recites that the valve can only be actuated once. As discussed above, fails to teach or suggest such a feature. The Nelson patent fails to provide the missing teachings as Nelson does not even describe such a valve. Accordingly, Cui and Nelson, both alone and in combination, fail to teach or suggest the subject matter of claims 3, 5, 7, 8, 18, 47, and 50. Applicant respectfully submits that the rejection under Section 103(a) should be withdrawn.

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If the Examiner has any questions regarding the foregoing, she is cordially invited to contact the undersigned so that any such matters may be promptly resolved.

Respectfully submitted,

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